FEDERAL ELECTION COMMISSION

In the Matter of: Mitchell Wade
MZM, Inc.
MZM Inc., Political Action Committee

MUR NO: <u>5666</u>



COMPLAINT

1. Citizens for Responsibility and Ethics in Washington hereby brings this complaint before the Federal Election Commission seeking an immediate FEC investigation and enforcement action against Mitchell Wade, MZM, Inc., and the MZM, Inc. Political Action Committee (PAC) for direct and serious violations of federal campaign finance law.

Complainant

2. Citizens for Responsibility and Ethics in Washington is a non-profit, non-partisan organization dedicated to ensuring accountability in public officials.

Respondents

3. MZM, Inc. is a defense contractor, the company has a political action committee, MZM, Inc. PAC, and Mitchell Wade is the founder and president of MZM, Inc.

Jurisdiction

4. The Commission has the authority to take enforcement action based on a complaint where it finds reason to believe that a person "has committed, or is about to commit," a violation of the law." 2 U.S.C. §§ 437g(a)(2), 437g(a)(4)(A)(I), 437g(a)(6)(A); see also 11 C.F.R. § 111.4(a) ("Any person who believes that a violation . . . has occurred or is about to occur may file a complaint . . ."). Based on published reports, MZM, Inc., MZM Inc. Political Action Committee, and Mitchell Wade have committed violations of the law by forcing employees to make political contributions.

Factual Allegations

- 5. According to news reports, a former employee of MZM, Inc. stated that in the spring of 2002, MZM president Mitchell Wade was "twisting employees' arms to donate to his MZM Pac." Allegedly, employees "were called in and told basically either donate to the MZM PAC or . . . be fired." Marcus Stern, Contractor who bought Cunningham's house made employees give political contributions, San Diego Union Tribune, June 20, 2005 (attached as Exhibit A).
- 6. Three former MZM, Inc. officials have claimed that the company paid its employees double or triple what they could make elsewhere, making the political contributions a cost of doing business. <u>Id</u>. According to one of the employees, Wade reminded employees to contribute a designated amount to the company PAC. The amount was based on the employee's level of seniority in the company with more senior officials expected to give \$1,000 each and less senior employees expected to donate \$500. <u>Id</u>.
- 7. One of the unnamed employees claimed that one afternoon, he was rounded up with other employees in the company's Washington headquarters and told to write a check with the political recipient standing by. <u>Id</u>.

COUNT I

8. The Federal Election Campaign Act of 1971 ("FECA") specifically prohibits corporations from using job discrimination, financial reprisals, or the threat of job discrimination or financial reprisal to force employees to make political contributions. 2 U.S.C. §441b(b)(3)(A); 11 C.F.R. §114.5(a)(1). Corporations are also prohibited from facilitating the making of contributions to federal candidates. 2 U.S.C. §441b(b)(3)(A). FEC rules describe illegal corporate facilitation solicitations as those solicitations that "use coercion . . . to urge any

individual to make a contribution or engage in fundraising activities on behalf of a candidate or political committee." 11 C.F.R. §114.2(f)(2)(iv). Moreover, any solicitation of employees must explicitly inform them that they may decide not to contribute without fear of reprisal. 2 U.S.C. §441b(b)(3)(C).

- 9. In a case involving Mutual Bank, the FEC found reason to believe that Mutual Bank and Keith G. Willoughby, President of the bank, violated 2 U.S.C. §441b(b)(3)(C) "by failing to inform employees of Mutual Bank of their right to refuse to contribute to a solicitation without fear of reprisal." Mutual Bank, FEC MUR 1998 (August 25, 1985) (General Counsel's Report attached as Exhibit B). The General Counsel's report found that a memorandum issued by Willoughby to the Bank's vice presidents stating that "[e]very single officer of this institution should-must consider it a part of his or her position to contribute," constituted coercion under FECA. Id.
- 10. Here, by using coercion such as the threat of detrimental job action to force employees to make contributions on behalf of candidates and political action committees, Mitchell Wade, MZM, Inc., and MZM, Inc. PAC all violated the FECA. 2 U.S.C. §441b(b)(3)(A), §441b(b)(3)(C).

COUNT II

11. MZM employees were paid salaries that were artificially inflated to enable them to contribute to both MZM's political action committee as well as to specific candidates. According to the employees quoted in the *San Diego Tribune* article, employees were paid "double or triple what they could make elsewhere" with the expectation that they would be asked to contribute the excess amount in the form of political contributions both to MZM, Inc. PAC and to specific candidates. *See Exhibit A*.

12. By including these extra funds in employees' salaries, which were then funneled to MZM's political action committee and to specific candidates, MZM, Inc., a corporation, made prohibited corporate contributions in violation of 2 U.S.C. §441b(a). Similarly any candidate who received a contribution from MZM, Inc. PAC violated the law by accepting a corporate contribution.

COUNT III

- 13. MZM employees were paid salaries that were artificially inflated to enable them to contribute to both MZM's political action committee as well as to specific candidates. According to the employees quoted in the San Diego Tribune article, employees were paid "double or triple what they could make elsewhere" with the expectation that they would be asked to contribute the excess amount in the form of political contributions both to MZM, Inc. PAC and to specific candidates. See Exhibit A.
- 14. By including these extra funds in employees' salaries, which were then funneled to MZM, Inc. PAC and to specific candidates, MZM made illegal conduit contributions to its political action committee and to specific candidates. The FECA specifically prohibits any person from making a contribution in the name of another person or knowingly permit his name to be used to effect such a contribution. 2 U.S.C. §441f. Similarly, no person shall knowingly accept a contribution made by one person in the name of another person. <u>Id</u>.

COUNT IV

15. Because MZM, Inc., MZM, Inc. PAC, and Mitchell Wade apparently knowingly and willfully: 1) coerced employees into making political contributions; 2) caused MZM, Inc. to make prohibited corporate contributions; and 3) caused MZM, Inc. to make conduit

contributions; the company, the PAC, and Mitchell Wade are subject to criminal prosecution pursuant to 2 U.S.C. §437g(d)(1)(D).

WHEREFORE, Citizens for Responsibility and Ethics in Washington requests that the Federal Election Commission conduct an investigation into these allegations, declare the respondents to have violated the federal campaign finance laws, impose sanctions appropriate to these violations and take such further action as may be appropriate, including disgorgement of the unlawful contributions by those candidates who have accepted money from MZM, Inc. PAC: Representatives Randy "Duke" Cunningham, Mario Diaz-Balart, Randy Forbes, Virgil Goode, Katherine Harris, Duncan Hunter, John Murtha and Rick Renzi; and Senators Elizabeth Dole, Lindsey Graham, Trent Lott, and Jeff Sessions. We also request that the Federal Election Commission refer this matter to the Department of Justice for investigation into possible criminal wrongdoing.

Melanie Sloan, Executive Director

Citizens for Responsibility and Ethics in

Washington

2nd Floor

11 Dupont Circle, N.W.

Washington, D.C. 20036

(202) 588-5565

Verification

Citizens for Responsibility and Ethics in Washington, acting through Melanie Sloan, hereby verifies that the statements made in the attached Complaint are, upon information and belief, true.

Sylorn pursuant to 18 U.S.C. § 1001.

Melanie Sloan

Sworn to and subscribed before me this 21st day of June, 2005.

Notary Public

Blanca M. Clayton Notary Public, District of Columbia My Commission Expires 04-30-2967

EXHIBIT A

Union-Tribune.

Contractor who bought Cunningham's house made employees give political contributions

By Marcus Stern

CÓPLEY NEWS SERVICE

6:39 p.m. June 20, 2005

WASHINGTON – A defense contractor who took a \$700,000 loss on the purchase of Rep. Randy Cunningham's Del Mar residence in 2003, and provided a yacht for his use in the nation's capital, forced his employees to make political contributions that benefited the San Diego Republican and other members of Congress, according to three former senior officials of the company.

The former employees of the defense contractor, MZM, Inc., said separately that its founder, Mitchell Wade, routinely forced employees to give political donations.

"By the spring of '02, Mitch was twisting employees' arms to donate to his MZM PAC," said one senior former employee. "We were called in and told basically either donate to the MZM PAC or we would be fired."

Campaign finance laws prohibit employers from compelling their workers to contribute to the company's political action committee (PAC). They may encourage contributions, but not compel them by threats.

"It is illegal to solicit campaign contributions for the company's political action committee by the use of threats, force or threat of job reprisal," said Larry Noble, director of the Center for Responsive Politics, a nonpartisan organization that closely follows the flow of money to politicians. "If they say to somebody, 'You either give or you are going to be fired,' they have violated the law."

The three former MZM officials declined to be identified for this article, describing Wade as vindictive and saying they feared for their careers if their names were disclosed. MZM paid its employees double or triple what they could make elsewhere, making the contributions a cost of doing business for them, they said.

Company officials failed to respond to requests for comment.

Wade reminded employees before their anniversary date to contribute a designated amount to the company PAC, one of the former company officials. The specific amount was based on their level of seniority in the company, with more senior officials expected to give \$1,000 each and less senior employees expected to give \$500, the former official said.

A third former employee of MZM described being rounded up along with other employees one afternoon in the company's Washington headquarters and told to write a check with the political recipient standing by. The former employee didn't give the name of the politician receiving the donations.

"When they solicit contributions to the political action committee, they are supposed to say that the contribution is voluntary," Noble said of employers seeking contributions from employees for the company's PAC. "They are allowed to suggest an amount to give but they have to say you can give more or less, or nothing at all.

"And they have to say that there will be no job reprisals for not giving. So even being silent on it, and soliciting contributions, is actually, technically a violation of the law. But when you go to the other side and you threaten them, they can be subject to criminal prosecution," said Nobel.

"Normally we talk in campaign finance law of civil violations, of paying a penalty," said Nobel. "But you can also be criminally prosecuted. Criminal prosecutions come in when you have knowing and willful violations. Those are the really egregious ones. And I can't say specifically, because I don't have all the facts of the case, but it sounds you're getting to one that may very well be a knowing and willful violation."

MZM's PAC donated \$17,000 to Cunningham during the 2002 and 2004 election cycles, covering a total of four years. The donations included \$6,000 to his campaign in each cycle and \$5,000 to his leadership PAC, the American Prosperity PAC. MZM's PAC also gave \$1,000 to Rep. Duncan Hunter, R-El Cajon, during the 2004 election cycle.

MZM officials also made personal contributions to Cunningham and several other lawmakers, outside of MZM's PAC. For instance, Wade himself made four contributions to Cunningham during 2001 and 2002 totaling \$2,000. During 2003 and 2004, he made three contributions to Cunningham totaling \$6,000. These contributions, made outside MZM's PAC, have raised no ethical questions.

But MZM officials and their family members combined to give two other lawmakers substantial contributions through both the MZM PAC and through individual contributions made outside the PAC.

MZM's PAC gave Reps. Katherine Harris, R-Fla., and Virgil Goode, R-Va., \$10,000 each during the 2004 election cycle. Separately, MZM officials and their family members gave Harris a total of \$44,000 during the 2004 election cycle and they gave Goode a total of \$27,601 during the same period.

MZM has a facility inside Goode's rural Virginia district, not far from a government facility that is one of MZM's customers, the Army's National Ground Intelligence Center in Charlottesville.

MZM also is planning to buy a facility in Harris' district, where it can be close to two other customers, the U.S. Central Command, which oversees the ongoing wars in Iraq and Afghanistan, and the Special Operations Command.

Cunningham is on the Permanent Select Committee on Intelligence and the defense appropriations subcommittee, which puts him in position to influence the awarding of defense intelligence contracts.

MZM had 56 such contracts totaling \$68,645,909 in fiscal year 2004, according to Keith Ashdown, an analyst with Taxpayers for Common Sense. The contracts, for the most part, have been awarded to MZM without competition through a process known as "blanket purchase agreements."

EXHIBIT B



FEDERAL ELECTION COMMISSION WASHINGTON, D.C. 20463

September 20, 1985

Amos Hugh Scott, Esquire Choate, Hall & Stewart Exchange Place 53 State Street Boston, Massachusetts 02109

Re: MUR 1998
Mutual Bank
Keith G. Willoughby

Dear Mr. Scott:

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S S On May 8, 1985, the Commission found reason to believe that your clients had violated 2 U.S.C. § 441b(b)(3)(C), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act") in commission with the above referenced MUR. However, after considering the circumstances of this matter, on 1985, the Commission determined to take no further action and close its file.

The file in this matter will be made part of the public record within 30 days. Should you wish to submit any materials to appear on the public record, please do so within 10 days.

If you have any questions, please direct them to George Demougeot, the staff member assigned to this matter at (202) 523-4000.

John W. McGarry Chairman

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)

Mutual Bank)

MuR 1998

Keith G. Willoughby)

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session of September 10, 1985, do hereby certify that the Commission decided by a vote of 4-2 to take the following actions in MUR 1998:

- Take is further action against Mutual Bank and Keith G. Willoughby, as President of Mutual Bank.
- Approve the letter attached to the General Counsel's report dated August 29, 1985.
- 3. CLOSE THE FILE.

Commissioners Aikens, Elliott, Josefiak, and McGarry voted affirmatively for the decision; Commissioners Harris and McDcmald dissented.

Attest:

9-10-85

Date

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Marjorie W. Emmons
Secretary of the Commission

SENSITIVE

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of
Mutual Bank
Keith G. Willoughby

MUR 1998

SECRETARY

GENERAL COUNSEL'S REPORT

I. BACKGROUND

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This matter is based on separate referrals from the Federal Home Loan Bank Board ("FHLBB") and the Department of Justice. On May 8, 1985, the Commission found reason to believe that Mutual Bank and Keith G. Willoughby, as President of Mutual Bank, violated 2 U.S.C. § 44lb(b)(3)(C), by failing to inform employees of Mutual Bank of their right to refuse to contribute to a solicitation without fear of reprisal. The violation centered on a memorandum issued by Mr. Willoughby on October 26, 1984, to "All Officers of Mutual Bank" concerning their "unacceptable" response to a prior appeal to contribute to Massachusetts Thrift PAC and Thrift PAC. The memorandum stated, in part, that "[e] very single officer of this institution should --must-consider it a part of his or her position to contribute to Massachusetts Thriftpac and Thriftpac." A total of \$281.50 was contributed by Mutual Bank employees after the October 26 memorandum.

On March 11, 1985, a plea agreement was filed in the U.S.

District Court for the District of Massachusetts in which Mutual

Bank admitted a criminal violation of 2 U.S.C.

\$ 441b(b)(3)(C).(Attachment I) On March 29, Mutual Bank paid a

\$25,000 fine, the maximum fine for this violation. We note that

Keith G. Willoughby, Chairman of the Board, signed this agreement

along with counsel on behalf of Mutual Bank.

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In response to the Commission's reason to believe finding, respondents request that the Commission take no further action in this matter. (Attachment II) Further, should the Commission decide to pursue this matter, the Respondents request to enter into pre-probable cause conciliation. (Attachment III)

FACTUAL AND LEGAL ANALYSIS

2 U.S.C. § 441b(b)(3)(C) prohibits any person soliciting an employee for a contribution to fail to inform such employee, at the time of the solicitation, of his right to refuse to so contribute without any reprisal.

In response to the Commission's reason to believe determination, Respondents acknowledge a violation of 2 U.S.C.

\$ 441b(b)(3)(C), but request that the Commission, given the prior criminal disposition of this matter, take no further action.

Respondents state that Mr. Willoughby did not intend that the October 26 memorandum be coercive and, further, that Mr.

Willoughby was unaware of the requirement of 2 U.S.C.

\$ 441b(b)(3)(C). Respondents point out that October 26 appeal was not very coercive as a practical matter considering that it only raised an additional \$281.51. */ However, Respondents go on to acknowledge that the October 26 memorandum clearly did not advise the Bank employees of their right to decline to contribute without any reprisal as required.

^{*/} Respondents suggest that the insertion of the word "must" into the offending passage was simply a "stylistic flourish to emphasize the word 'should' and was not intended to alter the precatory or exhortative notion of 'should' into a mandate."

While we do not agree with the assertions of the respondent essentially characterizing the violation as benign, we do believe that the violation has been redressed. Mutual Bank has acknowledged a criminal violation of 2 U.S.C. \$ 441b(b)(3)(C) and paid the maximum fine for such a violation. For these reasons, the Office of General Counsel recommends that the Commission take no further action in this matter.

RECOMMENDATION

- Take no further action against Mutual Bank and Keith G.
 Willoughby, as President of Mutual Bank.
- 2. Approve the attached letter.
- 3. Close the file.

Olyust 39,1985

Charles N. Steele General Counsel

By:

Kenneth A. Gross

Associate General Counsel

Attachments

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- I. Plea Agreement
- II. Letter from Respondent dated 5/24/85
- III. Letter from Respondent dated 6/18/85
- IV. Proposed letter

UNITED STATES DISTRICT COURT DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA	, ,	•
)	CRIMINAL NO.
v.)	VIOLATIONS:
)	2 U.S.C. \$441b(b)(3)(C
MUTUAL BANK, fsb)	2 U.S.C. \$437q(d)

INFORMATION

The United States Attorney charges as follows:

At all times material hereto:

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- 1. The MUTUAL BANK fsb, defendant herein, was a banking institution organized under the banking laws of the Commonwealth of Massachusetts and chartered by the Federal Home Loan Bank Board.
- 2. Mith Willoughby was the Chairman of the Board and the President of the defendant MUTUAL BANK.
- 3. Federal law prohibited corporations, including MUTUAL BANK, from making political contributions. However, it did allow, under certain conditions, the solicitation of individual employees for voluntary contributions to political action committees.
- 4. The National Council of Savings Institutions (NCSI) was a trade association, the membership of which consisted of banking institutions throughout the United States. The purpose of NCSI was to promote the interests of the thrift industry, and to influence the nomination and election of candidates for elective office whose views were favorable to the thrift industry.

- 5. "Thriftpac" was a political action committee organized pursuant to 2 U.S.C. \$\$432 and 433, Federal Election Campaign Act (FECA), and affiliated with NCSI pursuant to 2 U.S.C. \$441b(b)(4), FECA, to solicit voluntary contributions from the executive and administrative personnel of member banks, and to recontribute the funds thus raised to influence the nomination and election of candidates for various federal offices.
- 6. On or about May 10, 1984, the defendant MUTUAL BANK, acting through its officer and agent Keith Willoughby, authorized Thriftpac to solicit voluntary political contributions from the executive and administrative personnel of the said MUTUAL BANK, pursuant to 2 U.S.C. \$441b(b)(4)(D), FECA.
- 7. On or about August 15, 1984, an internal Bank Memorandum was sent to "All Officers" soliciting contributions to Thriftpac.
- 8. On or about October 26, 1984, Willoughby sent another
 Memorandum to "All Officers of Mutual Bank." This memorandum
 referred to the August memorandum, and then stated that the Bank's
 officers had failed to reach the Thriftpac "goal." The October
 memorandum then stated, "Even worse, only nineteen of the fifty-nine
 officers in the bank have contributed. That is unacceptable. ...
 you should, as officers of this bank, all support the PAC's. Every
 single officer of this institution should -- must -- consider it a
 part of his or her position to contribute to both Mass. Thriftpac
 and Thriftpac. Please send your checks, not later than next Friday,
 to [the Bank's Thriftpac Coordinator] to be forwarded."

10. On or about October 26, 1984, at Boston and within the District of Massachusetts, the defendant,

MUTUAL BANK,

acting through its officer, agent and employee Reith Willoughby, knowingly and willfully solicited contributions to Thriftpac from employees of the aforesaid MUTUAL BANK, without informing said employees, at the time of the solicitation, of their right to refuse to make the contribution thus solicited without fear of any reprisal.

All in violation of Title 2, United States Code, Section 441b(b)(3)(C) and Title 2, United States Code, Section 437g(d).

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ω Γυ WILLIAM F. WELD United States Attorney

DANIEL I. SMALL Assistant U.S. Attorney